



# PAYROLL AND EMPLOYEE BENEFITS – IMPACT OF ERISA AND TAX CODE

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Washington Metropolitan Area Chapter of the American Payroll Association

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# Today's Presenter

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Michael most recently worked for Wells Fargo Insurance Services, and joined USI when the two companies merged in 2017. Prior to joining Wells Fargo in June 2009, Michael worked for 12 years in the employee benefits practices of a large national law firm as well as a large Carolinas-based firm.

He earned his B.B.A. in finance from Eastern Michigan University in Ypsilanti, MI, and his J.D., cum laude, from Wake Forest University in Winston-Salem, NC. He is a licensed attorney and has earned the Certified Employee Benefits Specialist designation from the International Foundation of Employee Benefit Plans.

Originally from Fenton, Michigan, Michael relocated to North Carolina in 1990, and now lives in Charlotte with his wife and two teenage children.

# Agenda

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- Employee contributions towards benefits
- “Imputed” income and taxable benefits
- Wellness program incentives
- Affordable Care Act reporting
- Questions and answers

# Employee contributions towards benefits

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- ERISA and state wage withholding laws
- Pre-tax
  - Cafeteria plan document
  - Qualified benefits
  - Benefits typically NOT handled pre-tax
  - 401(k)/403(b)
- Mid-year election changes
  - General rule: No changes allowed
  - Numerous exceptions – see attachment at end
- Nondiscrimination issues

# “Imputed” income and taxable benefits

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- 105(h) and discriminatory self-insured plans
- Domestic partners
  - Still tax dependents?
  - Employer contributions
  - Employee contributions
- Disability plans
  - Complicated – changing employer contributions
  - Short-term disability versus Long-term disability
- Life insurance benefits
  - Employee coverage
  - Coverage of spouse and dependents

# Wellness program incentives

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- Part of group health plan
  - Reductions in premiums
  - Reductions in cost-sharing features
- Separate from group health plan
  - General rule – taxable wages, particularly cash or cash equivalents
  - In-kind, de minimis items likely excludible

# Affordable Care Act reporting

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- W-2 reporting of value of health coverage
  - <250 still optional
    - Based on W-2s filed in prior year be specific entity
    - Controlled group rules DO NOT apply
  - Report both employer and employee share of cost
  - Many optional items (dental, vision, HRA)
  - Very good IRS Website: <https://www.irs.gov/affordable-care-act/form-w-2-reporting-of-employer-sponsored-health-coverage>

# Affordable Care Act reporting - continued

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- Form 1095-C
  - Determining “full-time” employees
    - Basically, count the hours – 30 hours/week or 130 hours/month
    - Look-back measurement method (LBMM) used if high percentage of “variable hour” or “seasonal” employees
    - Still follow your plan’s eligibility rules – amend for LBMM if using it
  - “Affordable” coverage
    - Cost of cheapest single-tier coverage offered to employee
    - 9.56% of “household income” but “safe harbors”
      - Federal Poverty Level – about \$95 per month
      - Rate of Pay – based on salary, or 130 hours per month
      - W-2 – used Box 1 (pay subject to FIT)
  - Report actual covered individuals if self-insured – stops in 2019



# Questions?



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## Employee Benefits

# Overview of permissible Code § 125 cafeteria plan midyear election changes

A Code § 125 cafeteria plan may be drafted to permit participants to change their before-tax salary reduction elections midyear due to certain specified events as described below. Alternatively, a sponsor may design the plan so that participants are not allowed to modify their elections during the middle of a plan year, or may make only certain modifications upon a specified event.

### In order to process any cafeteria plan midyear election change, use the following procedural checklist:

1. Does the participant's reason for requesting an election change fall within one (or more) of the permitted election change events recognized under IRS regulations or other formal IRS guidance?
2. Does the requested election change satisfy the applicable event's consistency requirements? *Note: The consistency rules for accident or health coverage provide that no election change is allowed unless the event affects eligibility, but a more relaxed standard applies for group term life insurance, disability plans, and dismemberment coverage.*
3. Is the requested election change provided for in the cafeteria plan document?
4. Is the requested election change permitted under the terms of the applicable insurance policy/plan document that governs the component benefit involved?
5. Has the participant submitted sufficient documentation to support the request?
6. Has the request been made on a timely basis, consistent with the terms of the cafeteria plan (e.g., 30 days)?

Event	Medical	Dental and vision	Flexible spending accounts
<b>Marriage</b> (same-sex and opposite-sex)	<ul style="list-style-type: none"><li>• Enroll new spouse; enroll employee and any eligible dependent children not already covered</li><li>• Cancel election if employee and/or dependents enroll in new spouse's coverage</li><li>• Change to benefit option may be made, since this is also a HIPAA Special Enrollment ("HIPAA SE") event</li></ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"><li>• Enroll or increase contributions to cover new dependent(s) or decrease election if employee or dependents become eligible under new spouse's health plan</li></ul> <b>Dependent Care Assistance Program (DCAP)</b> <ul style="list-style-type: none"><li>• Enroll if employee gains an eligible dependent, and spouse is employed, disabled, or a full-time student</li><li>• Increase or decrease employee contributions for the remainder of the plan year, if expenses increase or decrease as result of marriage</li><li>• Disenroll if spouse is not employed, disabled, or a full-time student or makes a DCAP coverage election under spouse's plan</li></ul>

## Overview of permissible Code § 125 cafeteria plan midyear election changes

Event	Medical	Dental and vision	Flexible spending accounts
<b>Gain dependent through birth, adoption, placement for adoption</b>	<ul style="list-style-type: none"> <li>Enroll new child; employee, spouse, and any other eligible dependent children may also enroll if not already covered</li> <li>Cancel election or change tier of coverage if employee or dependents enroll in spouse's plan</li> <li>Change to benefit option may be made (HIPAA SE)</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>Same as medical</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>Enroll or increase if employee gains an eligible dependent, and spouse is employed, disabled, or a full-time student</li> <li>Disenroll or decrease if expenses cease or decrease; for example, if spouse is no longer employed</li> </ul>
<b>Ineligibility of spouse/dependent</b> (including age of eligibility, death, divorce, or legal separation)	<ul style="list-style-type: none"> <li>Remove spouse or dependent from election if plan eligibility is lost as a result of the event</li> <li>Change to benefit option may be made</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>Disenroll or decrease contributions</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>Disenroll or decrease contributions</li> </ul>
<b>Change of residence/move</b> (generally only for changes that affect eligibility)	<ul style="list-style-type: none"> <li>If employee's current election is not available in new location, or a dependent moves out of the service area, employee can enroll in any available option in that area, disenroll, or reduce tier of coverage to drop dependent that moved</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>Enroll or increase or disenroll or decrease if move affects expenses</li> </ul>

## Overview of permissible Code § 125 cafeteria plan midyear election changes

Event	Medical	Dental and vision	Flexible spending accounts
<b>Change of employment status triggering eligibility change</b>	<ul style="list-style-type: none"> <li>Employee or dependent becomes newly eligible for spouse's employer sponsored plan: <ul style="list-style-type: none"> <li>Disenroll or change coverage tier if employee or dependents are enrolled in spouse's new plan</li> </ul> </li> <li>Employee or dependents become ineligible for spouse's employer-sponsored plan (including full-time to part-time change): <ul style="list-style-type: none"> <li>Enroll employee and dependents if previously covered under spouse's plan (does not include voluntary cancellation of coverage)</li> </ul> </li> <li>Change to benefit option may be made (HIPAA SE)</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>Enroll or increase contributions if you or your dependents change coverage as a result of your change in eligibility or a spouse's loss of eligibility</li> <li>Disenroll or decrease contributions if you or dependents enroll in spouse's plan when spouse becomes newly eligible</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>Enroll or increase or disenroll or decrease if expenses increase or decrease as a result of employment-related change</li> </ul>
<b>Spouse's annual open enrollment or permissible mid-year change in other employer plan</b>	<ul style="list-style-type: none"> <li>Enroll employee and eligible dependents if spouse drops coverage under other employer plan</li> <li>Cancel employee coverage or change tier of coverage if employee or dependents enroll in spouse's plan</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul>
<b>Insignificant change in cost</b>	<ul style="list-style-type: none"> <li>Automatically reflect change in cost in salary reduction election</li> <li>No other changes in elections are permitted</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>Unclear – likely no changes permitted</li> </ul>

## Overview of permissible Code § 125 cafeteria plan midyear election changes

Event	Medical	Dental and vision	Flexible spending accounts
<b>Significant change in cost</b>	<ul style="list-style-type: none"> <li>Enroll employee and eligible dependents in an available benefit option</li> <li>Change employee election to decrease costs or elect a new coverage option with decreased cost</li> <li>Cancel your election (if only one option)</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>Same as medical, except no change can be made when the cost change is imposed by a dependent care provider who is a relative of the employee</li> </ul>
<b>Significant coverage curtailment</b>	<ul style="list-style-type: none"> <li>Without loss of coverage: Revoke election for curtailed coverage and enroll in plan with similar coverage</li> <li>With loss of coverage: Revoke election for curtailed coverage and enroll in plan with similar coverage or drop coverage if no similar benefit package option is available</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>Election change may be made whenever there is a change in provider or a change in hours of dependent care</li> </ul>
<b>Addition or significant improvement of benefit package option</b>	<ul style="list-style-type: none"> <li>Employee may elect coverage to add the new benefit option or change existing coverage to new benefit option</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul>
<b>Loss of group coverage from governmental or educational institution</b> (CHIP, Tribal, foreign government, TRICARE)	<ul style="list-style-type: none"> <li>Employee may elect coverage or increase tier of coverage</li> <li>Change to benefit option may be made if losing CHIP (HIPAA SE)</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul>

## Overview of permissible Code § 125 cafeteria plan midyear election changes

Event	Medical	Dental and vision	Flexible spending accounts
<b>Leave under Family Medical Leave Act (FMLA)</b>	<ul style="list-style-type: none"> <li>Employee may revoke or continue coverage election during leave</li> <li>Employer may also require that coverage election continue, but discontinue employee contributions and recover premiums upon return to work</li> <li>Upon return, employee must be reinstated in coverage election on the same terms as before leave if coverage terminated during the leave, including right to revoke or change elections as employees not on FMLA leave</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>Coverage election may continue during leave as long as contributions continue</li> <li>Employee may discontinue coverage election while on leave and make a new election upon return</li> <li>Employee may elect to reinstate a prorated level of coverage that is reduced by the amount of contributions missed during the leave</li> <li>Employee may reinstate the original coverage election where contributions did not continue so that expenses during the unpaid leave may be reimbursed by increasing the remaining salary reduction amount to cover the missed contributions</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>Participation suspended during the course of the leave</li> </ul>
<b>Qualified reservist called to active duty</b>	<ul style="list-style-type: none"> <li>Unofficial guidance indicates that agencies are likely to take an expansive approach to election changes for employees departing for and returning from service in the uniformed services</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>Employees who are called to active duty have the option of requesting a distribution (cashing-out) of the balance in their Health FSA (contributed amount reduced by reimbursements)</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>No distributions are permitted</li> </ul>
<b>Medicare/Medicaid enrollment or disenrollment of employee, spouse, or dependent</b>	<ul style="list-style-type: none"> <li>Employee may cancel or reduce coverage election if employee, spouse, or dependent becomes enrolled in Medicare or Medicaid</li> <li>Employee may elect or increase coverage election upon a loss of eligibility for Medicare or Medicaid</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>Disenroll or decrease contributions if employee, spouse, or dependent becomes enrolled in Medicare or Medicaid</li> <li>Enroll or increase contributions upon enrollment due to loss of eligibility for Medicare or Medicaid</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul>
<b>Judgments or orders addressing benefits as a result of divorce, legal separation, or change in custody (QMCSOs etc.)</b>	<ul style="list-style-type: none"> <li>Employee may elect or increase coverage election to provide coverage for an eligible dependent (but not for a former spouse)</li> <li>Employee may cancel or reduce coverage election if order requires spouse, former spouse, or other individual to provide coverage</li> </ul>	Same as medical	<b>Health FSA</b> <ul style="list-style-type: none"> <li>Enroll or increase contributions</li> <li>Disenroll or decrease contributions</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul>

## Overview of permissible Code § 125 cafeteria plan midyear election changes

Event	Medical	Dental and vision	Flexible spending accounts
<b>HIPAA special enrollment rights</b> (loss of other health coverage, Medicaid or CHIP; marriage, birth, adoption or placement for adoption; eligible for premium assistance subsidy from Medicaid or CHIP)	<ul style="list-style-type: none"> <li>Employee may elect coverage or increase tier of coverage</li> <li>Change to benefit option may be made</li> </ul>	No changes permitted if benefits are excepted from HIPAA portability requirements (many dental and vision plans are excepted benefits not subject to HIPAA portability requirements)	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted if benefits are excepted from HIPAA portability requirements (most health FSAs are excepted benefits not subject to HIPAA portability requirements)</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul>
<b>Marketplace/ Exchange enrollment</b>	<ul style="list-style-type: none"> <li>Employee may revoke coverage election if enrolling in Marketplace/Exchange coverage (during open enrollment or a Special Enrollment Period)</li> </ul>	No changes permitted if benefits are excepted benefits	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> No changes permitted
<b>Reduction in hours below 30/week (without loss of eligibility) and enrolling in other coverage</b>	<ul style="list-style-type: none"> <li>Employee may revoke coverage if enrolling in other minimum essential coverage</li> </ul>	No changes permitted if benefits are excepted benefits	<b>Health FSA</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul> <b>DCAP</b> <ul style="list-style-type: none"> <li>No changes permitted</li> </ul>

## Section 125 cafeteria plan – administrative procedures

### **Consistency rule**

The regulations place limits on the types of changes that can be made. If a cafeteria plan allows midyear modification in elections, the change must be consistent (“on account of and corresponds”) with the qualifying event. For example, if one of the employee's children dies, the employee can drop that child from coverage, but cannot make changes affecting other dependents or a spouse.

### **Timely request**

Many plans impose a time limit (typically 30, 31, or 60 days) on when an election change must be requested following a permitted election change event. Time limits are based on plan design and are not required by the regulations. Most plans allow for 30 days for a participant to request an election change except with respect to the HIPAA Special Enrollment rights for loss of Medicaid eligibility and becoming eligible for a state premium assistance subsidy from Medicaid. These special enrollment rights allow participants 60 days to request special enrollment.

## Pre-tax HSA contribution election changes

Pre-tax HSA contribution election changes must be allowed at least monthly and upon a loss of HSA eligibility.

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